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JAMES R. BROWNING

Supreme Court of the United States

October Term, 1960

No. 841

AGNES KELLY O'TOOLE

UNITED STATES OF AMERICA

REPLY BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

October Term, 1960

No. 841

AGNES KELLY O'TOOLE,

Petitioner,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

Argument

The Government repeats the same arguments which this court rejected in *Williams* v. *U. S.*, 350 U. S. 857. The Government's argument ignores the section of the Tort Claims Act which is the very essence of the Tort Claims Act, 28 U. S. C. Sec. 2674, 62 Stat. 983:

> "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

In addition, the argument ignores the basic intention of Congress in enacting the Tort Claims Act. The Federal Tort Claims Act was part of the Reorganization of Con-

gress Act enacted in 1946 and the purpose of the act was to relieve the Congress of the United States of the burden of passing on claims against the United States and in effect waived the sovereign immunity of the United States so that recovery could be had against the United States in situations where if the United States was a private individual it would be liable for such tortious conduct (*Indian Towing Co.* v. *United States*, 350 U. S. 61). This court in the *Williams* case brushed aside the technicalities asserted by the Government and held that the Government would be liable, in the same manner and to the same extent as a private individual under like circumstances would be liable under the law of the state where the tort occurred.

In the case at bar petitioner made out a prima facie case under New York law by proving ownership of the car in question. In addition, petitioner offered in evidence the Examination before Trial of the United States wherein the United States admitted that Cunningham had permission to use the car until the following Monday after the occurrence in question. Subsequently, on the trial, the Government attempted to repudiate its solemn admission and offered testimony of another employee to the effect that Cunningham was instructed to return the car at 6 P. M. on Friday evening which was before the time that the tort occurred. Under New York law this contradictory evidence on the part of the Government attempting to repudiate its own solemn admission in its Examination before Trial would not constitute substantial evidence to overcome the presumption created by New York law under the cases cited in the petition.

The public policy of the State of New York in connection with injuries sustained as a result of negligent operation of motor vehicles should also be considered. This public policy is contained in Section 310 of the Vehicle and Traffic Law of the State of New York as part of the

preamble to the Motor Vehicle Financial Security Act. Paragraph 2 of Section 310 of the Vehicle and Traffic Law provides as follows:

> "Declaration of purpose. The legislature is concerned over the rising toll of motor vehicle accidents and the suffering and loss thereby inflicted. The legislature determines that it is a matter of grave concern that motorists shall be financially able to respond in damages for their negligent acts, so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them".

This court granted certiorari to the United States Court of Appeals for the Second Circuit for failure to properly apply New York Law at its last term. *Robert Lawrence Inc.* v. *Devonshire Fabrics, Inc.*, 362 U. S. 909.

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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